



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR 29 2016

Jim Lottsfeldt, Treasurer
Put Alaska First
P.O. Box 92021
Anchorage, AK 99509

Re: MUR 7043

Dear Mr. Lottsfeldt:

On July 27, 2015, the Federal Election Commission (the "Commission") notified Put Alaska First (the "Committee") and you, in your official capacity as treasurer, of information it obtained in the normal course of carrying out its supervisory responsibilities suggesting that the Committee may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 12, 2016, the Commission found reason to believe that the Committee and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a), provisions of the Act and the Commission's regulations. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A), unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to the Committee and you as a way to resolve this matter at an early stage and without the need for briefing the issue of

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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whether or not the Commission should find probable cause to believe that the Committee and you, in your official capacity as treasurer, violated the law.

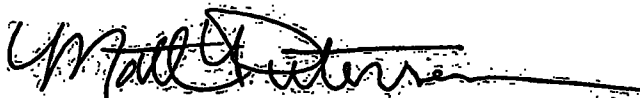
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If you are interested in engaging in pre-probable cause conciliation, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

On behalf of the Commission,


Matthew S. Petersen
Chair

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 MUR 7043

4
5 **RESPONDENTS:** Put Alaska First
6 and Jim Lottsfeldt in his
7 official capacity as treasurer
8

9 **I. INTRODUCTION**

10 This matter was generated based on information ascertained by the Federal Election
11 Commission (the "Commission") in the normal course of carrying out its supervisory
12 responsibilities.¹ The Reports Analysis Division ("RAD") referred Put Alaska First and Jim
13 Lottsfeldt in his official capacity as treasurer (the "Committee") to the Office of General Counsel
14 ("OGC") for failing to disclose receipts totaling \$440,000 on its original 2014 12-Day Pre-
15 Primary Report. The Committee acknowledges the violation but explains that the \$440,000 was
16 a single last-minute receipt that was mistakenly omitted and argues generally that it used best
17 efforts in independently amending its report. As discussed below, the violation is undisputed.
18 Further, the Committee does not present information that would justify excusing the untimely
19 filing under a best efforts defense. Therefore, the Commission has determined to open a matter
20 under review ("MUR") and finds reason to believe that the Committee violated 52 U.S.C.
21 § 30104(b) and 11 C.F.R. § 104.3(a) by failing to accurately disclose receipts.

22 **II. FACTS**

23 On August 8, 2014, the Committee filed its original 2014 12-Day Pre-Primary Report
24 covering the period from July 1, 2014, through July 30, 2014, which disclosed \$667,500 in

See 52 U.S.C. § 30109(a)(2).

1 receipts.² On January 26, 2015, the Committee filed an Amended 2014 12-Day Pre-Primary
2 Report that disclosed \$1,107,500 in receipts, an increase of \$440,000.³

3 Following the amended report, RAD sent the Committee a Request for Additional
4 Information (RFAI) seeking clarification of the substantial increase in receipts disclosed on the
5 Amended 2014 12-Day Pre-Primary Report.⁴

6 The Committee filed a Miscellaneous Electronic Submission ("Form 99") in response to
7 the RFAI explaining that the increase in receipts was due to a single contribution that was
8 received on July 30, 2014, and was misclassified.⁵ The Committee claimed that it initially
9 believed it received the contribution after the Pre-Primary Report period, but later determined
10 that it received the contribution within that coverage period.⁶ The Committee stated that it had
11 put procedures into place to ensure that all future contributions will be disclosed timely.⁷

12 A RAD analyst called Jim Lottsfeldt, the Committee's treasurer, to inform him that the
13 increase in activity on the Amended 2014 12-Day Pre-Primary Report could be referred for
14 further Commission action.⁸ The RAD analyst also acknowledged receipt of the Committee's
15 response to the RFAI and advised that the Committee could file an additional Form 99 to further
16 clarify the increased receipts.⁹ During the conversation, Mr. Lottsfeldt repeated the explanation

² RR 15L-27 at 1.

³ *Id.*

⁴ *Id.* at 1-2.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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1 in the Committee's RFAI response and stated that he would consult with the Committee's
2 counsel about supplementing the RFAI response, but no supplemental response was received.¹⁰

3 RAD referred the Committee to OGC for failing to disclose receipts totaling \$440,000 on
4 its original 2014 12-Day Pre-Primary Report.¹¹ Upon receipt of the Referral, OGC notified the
5 Committee and provided it with an opportunity to respond.¹²

6 In response to the Referral, the Committee explains that the increased receipts arose from
7 one transaction, a \$440,000 contribution from another political committee that it received by
8 wire transfer near the end of the 2014 12-Day Pre-Primary Report coverage period, which the
9 Committee erroneously omitted from the report.¹³ The Committee explains that it initially
10 omitted the contribution because the Committee lacked a trained accountant with prior
11 experience in bank reconciliations, and because the Committee was very active in the final stages
12 of the election cycle.¹⁴ The Committee emphasizes that it identified the omitted receipts on its
13 own initiative when reconciling its books and amended the report.¹⁵ The Committee also asserts
14 that it is effectively defunct and seeks termination.¹⁶ The Committee further asserts that the
15 omission of the single receipt does not compel a reason to believe finding.¹⁷ The Committee
16 generally asserts that while it must disclose its total receipts, "its report is nonetheless considered

¹⁰ *Id.*

¹¹ *See* RR 15L-27.

¹² *See* Notification Letter to Jim Lottsfeldt, Treasurer for the Committee (July 27, 2015); *see also* Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

¹³ Resp. at 1 (Oct. 2, 2015).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Resp. at 2 (citing *Lovely v. FEC*, 307 F. Supp. 2d. 294, 300 (D. Mass. 2004)).

1 in compliance with the Act when the treasurer had used best efforts to obtain, maintain, and
2 submit the required information.”¹⁸ Finally, the Committee asserts that it should not be
3 penalized because it did not act in bad faith, any injury to the public is mitigated by the fact that
4 the donor of the \$440,000 was a federally-reporting political committee that had given on
5 multiple occasions to the Committee, it is defunct, and there is no need to vindicate the
6 Commission’s authority here.¹⁹

7 **III. LEGAL ANALYSIS**

8 The Federal Election Campaign Act of 1971, as amended (the “Act”) requires committee
9 treasurers to file reports of receipts and disbursements in accordance with the provisions of
10 52 U.S.C. § 30104.²⁰ These reports must include, *inter alia*, the total amount of receipts.²¹

11 Here, the Committee did not comply with the Act’s reporting requirements when it failed
12 to disclose receipts totaling \$440,000 on its original 2014 12-Day Pre-Primary Report.

13 The Committee asserts that it should not be penalized for the single reporting error by
14 inexperienced personnel during a busy period of the election cycle because it independently
15 corrected the error, and it is defunct. The Committee also appears to assert that its actions
16 comply with the Commission’s best efforts regulations, stating generally that “its report is

¹⁸ *Id.* (citing 52 U.S.C. §§ 30104(b)(2), (i)).

¹⁹ *Id.* (citing *FEC v. Furgatch*, 869 F.2d 1256, 1258 (9th Cir. 1989) and *FEC v. Friends of Jane Harman*, 59 F. Supp.2d 1046, 1058 (C.D. Cal 1999) (a court considers the respondent’s good or bad faith, the injury to the public, the defendant’s ability to pay, and the need to vindicate the Commission’s authority when imposing a civil penalty)).

²⁰ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

²¹ 52 U.S.C. § 30104(b)(2); 11 C.F.R. § 104.3(a).

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1 nonetheless considered to be in compliance when the treasurer has used best efforts to obtain,
2 maintain, and submit the required information.”²²

3 The Committee’s best efforts argument is unpersuasive. It is not sufficient to generally
4 assert best efforts. The best efforts provision is an affirmative defense that a respondent must
5 establish.²³ In determining whether a committee has shown best efforts, the Commission
6 considers the affirmative steps taken to keep adequate records and make accurate reports, as well
7 as the reasons for the committee’s failure to obtain, maintain, or submit the proper information.²⁴

8 The Committee has not provided any information to support its claim that it used best
9 efforts to submit an accurate original 2014 12-Day Pre-Primary Report — it merely states that it
10 did. To the extent the Committee is blaming the error on inexperienced staff during a busy
11 period, the Best Efforts Policy generally excludes inexperience, negligence, or error of
12 committee staff or agents as a valid defense.²⁵ Similarly, the fact that the Committee
13 independently discovered and corrected the error does not satisfy the best efforts standard.

14 Further, the Committee’s other assertions are unavailing. The Committee is ultimately
15 responsible for filing accurate reports with the Commission. Its lack of bad faith is not germane
16 here as the Commission did not consider whether the violation is knowing and willful. The facts
17 that the Committee is inactive and insolvent and that the donor committee separately disclosed
18 the \$440,000 contribution do not excuse the violation.

²² Resp. at 2.

²³ See 52 U.S.C. § 30102(i) and 11 C.F.R. § 104.7(a) (“[w]hen the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act.”). See also, Statement of Policy Regarding Treasurers’ Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438, 31,440 (June 7, 2007) (“Best Efforts Policy”) (Commission does not consider best efforts defense unless a respondent asserts the facts that form the basis of that defense).

²⁴ Best Efforts Policy at 31,440.

²⁵ *Id.*

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2 capacity as treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a).

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